

ensure that the child receives appropriate physical education services in compliance with paragraphs (a) and (c) of this section.

(Authority: 20 U.S.C. 1401(a)(16); 1412(5)(B); 1414(a)(6))

NOTE: The Report of the House of Representatives on Public Law 94-142 includes the following statement regarding physical education:

Special education as set forth in the Committee bill includes instruction in physical education, which is provided as a matter of course to all non-handicapped children enrolled in public elementary and secondary schools. The Committee is concerned that although these services are available to and required of all children in our school systems, they are often viewed as a luxury for handicapped children.

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The Committee expects the Commissioner of Education to take whatever action is necessary to assure that physical education services are available to all handicapped children, and has specifically included physical education within the definition of special education to make clear that the Committee expects such services, specially designed where necessary, to be provided as an integral part of the educational program of every handicapped child.

(Authority: H. R. Rep. No. 94-332, p. 9 (1975))

§ 300.308 Assistive technology.

Each public agency shall ensure that assistive technology devices or assistive technology services, or both, as those terms are defined in §§ 300.5-300.6, are made available to a child with a disability if required as a part of the child's—

- (a) Special education under § 300.17;
- (b) Related services under § 300.16; or
- (c) Supplementary aids and services under § 300.550(b)(2).

(Authority: 20 U.S.C. 1412(2), (5)(B))

PRIORITIES IN THE USE OF PART B FUNDS

§ 300.320 Definitions of “first priority children” and “second priority children.”

For the purposes of §§ 300.321–300.324, the term:

- (a) *First priority children* means children with disabilities who—

- (1) Are in an age group for which the State must make FAPE available under § 300.300; and

- (2) Are not receiving any education.

(b) *Second priority children* means children with disabilities, within each disability category, with the most severe disabilities who are receiving an inadequate education.

(Authority: 20 U.S.C. 1412(3))

NOTE 1: After September 1, 1978, there should be no second priority children, since States must ensure, as a condition of receiving part B funds for fiscal year 1979, that all children with disabilities will have FAPE available by that date.

NOTE 2: The term *free appropriate public education*, as defined in § 300.8, means special education and related services that * * * “are provided in conformity with an IEP” * * *.

New first priority children will continue to be found by the State after September 1, 1978 through on-going efforts to identify, locate, and evaluate all children with disabilities.

§ 300.321 Priorities.

(a) Each SEA and LEA shall use funds provided under part B of the Act in the following order of priorities:

- (1) To provide FAPE to first priority children, including the identification, location, and evaluation of first priority children.

- (2) To provide FAPE to second priority children, including the identification, location, and evaluation of second priority children.

- (3) To meet the other requirements of this part.

(b) The requirements of paragraph (a) of this section do not apply to funds that the State uses for administration under § 300.620.

(Authority: 20 U.S.C. 1411 (b)(1)(B), (b)(2)(B), (c)(1)(B), (c)(2)(A)(ii))

NOTE: SEAs as well as LEAs must use part B funds (except the portion used for State administration) for the priorities. A State may have to set aside a portion of its part B allotment to be able to serve newly identified first priority children.

After September 1, 1978, part B funds may be used—

- (1) To continue supporting child identification, location, and evaluation activities;

- (2) To provide FAPE to newly identified first priority children;

- (3) To meet the full educational opportunity goal required under § 300.304, including